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STATEMENT
OF
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BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL
ECONOMIC POLICY AND TRADE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

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Mr. Chairman and Members of the Subcommittee:

I have requested a closed session for my testimony since I must discuss some classified information in order to properly explain the FBI's role in Technology Transfer. I would like to make an opening statement which I will try to key to the questions asked in Congressman Bingham's letter of February 18, 1981, to the Director of the FBI. (U)

Question #1

What resources of the United States government are devoted to the enforcement of national security controls? What are the functions of the Compliance Division of the Office of Export Administration, the U.S. Customs Service, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of State, and other agencies? What staff resources are devoted by these agencies to these tasks? How do the various agencies involved interact and coordinate with each other? (U)

Question #1 addresses the functions and resources of various agencies as well as means of coordination between the agencies. (U)

The FBI's responsibilities under the term "Technology Transfer" are actually quite limited, but I believe the FBI can and does play an important role. The FBI routinely investigates violations of espionage statutes and espionage cases often involve high technology. Espionage however, requires evidence that the compromised information or technology is related to the national defense and this has been further interpreted to mean classified information. The FBI also investigates violations of the Atomic

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Energy Act of 1954, but here again these violations involve either a loss of nuclear material or a compromise of classified information. (U)

Technology Transfer usually infers a violation of either the Arms Export Control Act or the Export Administration Act of 1979. Under the provisions of 28 CFR (0.85 (a)) the FBI has the authority and responsibility to investigate all violations of federal law not specifically assigned to another federal agency. The State Department administers the Arms Export Control Act and utilizes the U.S. Customs Service to investigate violations of this act. The responsibility for enforcing the Export Administration Act, of course, has been assigned, by the statute, to the Department of Commerce. (U)

The FBI's major contribution to the Technology Transfer issue comes in the pursuit of its foreign counterintelligence investigations. Under Executive Order 12036, the FBI conducts counterintelligence within the United States and coordinates the counterintelligence activities of other agencies within the Intelligence Community. If, during the course of these foreign counterintelligence investigations, information is developed that a principal of an investigation is involved in illegal technology transfer activities, this information is easily integrated into the ongoing counterintelligence investigation. The FBI also

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coordinates with the responsible export control agency in order to determine if the technology is indeed embargoed. If, during the course of foreign counterintelligence investigations, information concerning illegal technology transfer is developed which does not have foreign counterintelligence implications, this information is disseminated to the proper export control agency for its investigative use. (U)

In practice, it is sometimes difficult to judge whether illegal technology transfer activities have foreign counterintelligence implications or if it is a matter of simple greed on the part of the exporter. Normally investigative interest and jurisdiction can be established jointly by the responsible export control agency and the FBI. If a conflict should occur, the matter can be resolved in the newly formed Export Control Working Group chaired by the Department of Justice. This working group has not yet had to resolve any such problems, but it serves as an excellent forum for interested agencies to exchange information. (U)

As far as resources are concerned, the FBI has no resources dedicated to export control. The FBI has no regulatory function in export control; it does not monitor normal export traffic nor does it have a voice in determining what technology should be proscribed to whom. The FBI does not need additional resources to meet its limited responsibilities in export control. These responsibilities can be met during the course of foreign counterintelligence or other authorized investigations. ~~(C)~~

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Question #2

How are U.S. export control laws and the terms of export licenses enforced on U.S. exporters? (U)

The Department of Commerce and the U.S. Customs Service are addressing licensing procedures. The FBI must turn to them in order to find out if a license is required for a particular technology and if a license has been applied for or issued. Their judgement is essential for the FBI to determine whether a violation of an export control statute may have occurred. (U)

Question #3

How much do we know about, and how much control are we able to exercise over, unauthorized re-exports of U.S. technology by third countries to proscribed destinations? What specific methods are employed to discover and deter diversions? How extensive is extraterritorial enforcement? How much cooperation do we receive from foreign governments in enforcing the terms of export? What working arrangements do we have with such governments, and what mechanisms are employed? (U)

The FBI's role in third country diversions is relatively minor. The State Department and U.S. Customs Service representatives abroad play the key role through the CoCom (Coordinating Committee--includes countries of NATO except Iceland, plus Japan) process and bilateral customs agreements. The FBI has liaison with various law enforcement and intelligence agencies in all the CoCom countries. This liaison has produced several interesting counterintelligence leads involving possible clandestine attempts to acquire U.S. high technology. Continued cooperation with friendly counterintelligence services could produce some significant intelligence concerning hostile modus operandi. (C)

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Question #4

How, and how effectively, is our government able to assert control over transfers of know how through visits of foreign trade missions, scientists, and students to this country, and visits of U.S. businessmen and scientists abroad? (U)

It is difficult to even estimate the extent of technological loss through visits. First one must be able to define the acceptable limits of loss.

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In Fiscal Year 1980, there were 28,136 commercial and cultural visitors including 4,911 Soviet, 19,355 Bloc and 3,870 PRC (People's Republic of China) visitors. Additionally, there were 45 Soviet students, 189 Bloc students and 4,600 PRC students. Also, there were 1,036 Soviet tourists and 13,039 Bloc tourists. (S)

Another illustration of the enormity of numbers of visitors may be helpful. During a 5-month period in 1980, in the San Francisco field office area alone, there were 424 Eastern European visitors, 97 of whom were scientifically and technically oriented. Many of these visitors were at institutions on the leading edge of technology. Considering that there are no travel restrictions on these visitors, they could theoretically easily gain access to significant technology. Unfortunately, this is very difficult to quantify and, as a result, even more difficult to draw meaningful conclusions on the extent of technology loss.

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The honesty of the individual U.S. citizen is critical to the minimization of significant technology loss. If he reports suspicious business transactions or unusual interest in high technology, the loss can be minimized. (S)

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Question #5

How does our government control technology transfer through foreign acquisitions of U.S. technology companies, particularly by Eastern European interests? (U)

I am unaware of any government mechanism to control the acquisition of U.S. technology companies by any outside interests. Last year, the NSC tasked the FBI to prepare a list of firms defined as being "communist-owned, U.S. chartered." However, incorporation is a matter of state law and no one is required to report the formation of any corporation, regardless of ownership, to the FBI. Fortunately, through its foreign counterintelligence investigations, the FBI was aware of 31 such companies, that is, companies with some percentage of ownership by communist governments and incorporation in some state. Again, based on its previous investigations the FBI was able to estimate the threat each of those

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companies posed in technology transfer. Two firms were considered high threat based on their past and current activities.

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The FBI has requested the assistance of the Secretaries of State, Defense, Treasury, and Commerce, as well as the Director of Central Intelligence to help identify other possible communist-owned, U.S.-chartered firms. Help will certainly be needed since the possibilities of disguising corporate ownership are almost infinite. ~~(C)~~ FBI changed the (C) to (U)

The problem of exchanging information on U.S. persons between U.S. government agencies also arises. For example, the International Investment Survey Act of 1976 authorizes the Department of Commerce to collect a wide range of information on firms

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which have 10% or more foreign investment. Unfortunately, this same act also limits the dissemination of information, collected under the Act, to statistical information. There are severe penalties for releasing information for other purposes, presumably including law enforcement purposes. I mention this just to illustrate how difficult it is to obtain information on overt ownership. The determination of covert ownership is certainly not any easier, but the FBI has indications of possible hostile covert support of U.S. companies, and we are actively investigating these cases. ~~(C)~~

FBI changed the (C) to (U)

I would prefer to defer to other responsible agencies for a response to questions 6 through 10.

This concludes my prepared statement. I would be happy to try to answer your questions.

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